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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,545	12/21/2001	Jurgen Harms	70301/56786	1414

21874 7590 12/15/2003

EDWARDS & ANGELL, LLP
P.O. BOX 9169
BOSTON, MA 02209

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/15/2003

LD

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,545

Applicant(s)

HARMS ET AL.

Examiner

Pedro Philogene

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Allowable Subject Matter

Prosecution on the merits of this application is reopened on claims 5-11 considered unpatentable for the reasons indicated below:

Specification

The disclosure is objected to because of the following informalities: the reference to "patent claim1" on page 2, line 1 of the specification should be removed, especially in light of the fact that claim 1 was cancelled in a preliminary amendment. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 5-11 are rejected under 35 U.S.C. 102(a) as being anticipated by Lang et al. (WO 00/23013).

With respect to claim 5, Lang discloses in FIGS. 1 and 3 and the abstract a space-maintainer for inserting between two vertebral bodies (see title), the space-maintainer comprising a sleeve-shaped part (2) having a longitudinal axis (see 3); a second part (1) guided therein (see FIGS. 1,3), the second part being displaceable in an axial direction relative to the first part (see abstract, lines 4-5); a device connecting the sleeve-shaped first part and the second part, the device comprising a first component (5) having toothed profile extending parallel to the longitudinal axis (see FIG.1) and a

second component (fixed ring 15; page 9, line 16) having a toothed wheel (ring 15 is wheel) located for engagement with the toothed profile (see Fig.1) of the first component, wherein the first component is attached to the sleeve-shaped first part and the second component is attached to the second part (through the cavity (37) the ring is secured or connected to the second part).

With respect to claims 6-11, Lang discloses a toothed wheel mounted in the sleeve shaped first part; as best seen in FIGS.1,3; the second part comprising an outer surface and a grid section extending in an axial direction; as best seen in FIG.1,3, consisting of a plurality of indentations (27) and a stopping part (28) that cooperates with the grid section; a rotary instrument, as set forth in page 10, lines 15-19, which can engage the toothed wheel for changing a rotary position of the toothed wheel.

Conclusion

A shortened statutory period for reply to this action is set to expire **THREE MONTHS** from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


PEDRO PHILOGENE
PRIMARY EXAMINER

Pedro Philogene
December 10, 2003